



SETTLEMENT AGREEMENTS IN MATRIMONIAL PROCEEDINGS

INTRODUCTION

Often times when parties to a marriage have to go their separate ways, most receive succinct legal advice to settle their affairs first vide agreements mostly to settle the children of the marriage, spousal maintenance (alimony) and matrimonial property with its incidentals.

Kenyan law prohibits entering into agreements to dissolve a marriage. The Kenyan legal system works by either party filing a petition against the other, whose nature can be both contentious and/or non-contentious.

With the advancement of mediation in Kenya, it is necessary that parties consider amicably discussing and hopefully agreeing on the custody and maintenance of their child(ren), alimony and sharing of matrimonial assets and liabilities.

Why agreements? One may ask. We delve into the why below.

1. Customized solutions

The intricacies of each relationship mean that a litigated separation may not adequately address the unique needs and priorities of both individuals and/or their children. For instance, rigid court-ordered parental access and basic child support and/or alimony often fail to accommodate willing co-parents or factor in crucial elements like extracurricular activities. Mediation provides a powerful alternative, empowering couples to collaboratively design flexible solutions – such as daily access, shared custody, and holistic child provision – that truly reflect their specific circumstances.

Such agreements without doubt would best serve such parties.

2. Less strain on the relations and all parties involved

The power of mediation to reduce strain on relationships begins with its initial approach: a friendly letter. This stands in stark contrast to the adversarial filings of litigation. By setting a more cooperative tone from the

start, mediation empowers both parties, giving them a sense of control over the process. This reduced tension creates the necessary space for objective thought, allowing them to focus on finding constructive solutions to the issues at hand, for the benefit of themselves and their entire family network.

3. Targeted Litigation

Recognizing that complete consensus isn't always achievable in legal disputes, mediation provides a valuable framework for resolving the majority of issues through agreement. This process allows parties to identify and settle common ground, while reserving only the most intractable disputes for court intervention. The outcome is targeted litigation, ensuring that when legal action is necessary, it remains focused and efficient, addressing only the key sticking points for the benefit of all parties involved.

4. Confidentiality

Mediation provides a secure and confidential space for resolving disputes. Even when parties decide to have their mediated settlement formalized as a court order, the details of the sensitive issues they navigated remain private, unlike the potentially public nature of court filings. This assurance of confidentiality allows for more honest and open conversations, ultimately facilitating more effective and lasting resolutions.

5. Mutually Satisfactory Outcomes

Mediation looks at the bigger picture. It's not just about the two people separating or either of them getting what they may consider as a greater outcome than the other parties', mediation considers equity as much as possible and in certain circumstances,

equitability. It allows the parties consider the impact not only on themselves but also considers their children, other family directly and indirectly impacted, items considered of value among other nuanced considerations.

This helps everyone find common ground and create solutions where everyone is likely to feel like they've had a fair outcome – a win for the whole family's happiness and stability, not just individual victories.

6. Expert Facilitation

A skilled facilitator, particularly one with expertise in family law, is invaluable in mediation. Their knowledge of relevant legal principles and common family dynamics ensures the process stays focused, productive, and helps parties explore realistic and legally sound solutions. Furthermore, their experience and understanding of likely outcomes in both litigation and mediation empower parties to make informed decisions and increases the likelihood of a fair and lasting agreement by helping them navigate and avoid potential unknown legal pitfalls that could render their agreement void or voidable.

7. Proactive resolution/ Solutions for now and the future

One of the key strengths of mediation is its advocacy for proactive and comprehensive future planning. Instead of simply reacting to present issues, parties are empowered to shape varied outcomes that address potential eventualities. For instance, a separating couple in mediation can proactively appoint a legal guardian for their child, agree on extended maintenance provisions, and also establish mutually acceptable terms for alimony or spousal support.

8. Cost and Time effective

Beyond the emotional benefits, mediation offers a significant practical advantage for separating couples: it's generally far more cost and time-effective than going to court, allowing them to preserve their resources – both financial and emotional energy – for a less stressful and more affordable resolution. By empowering couples to control the process and work towards their own solutions, mediation avoids the drawn-out timelines and escalating expenses often associated with litigation, enabling them to navigate this challenging transition more quickly and move towards a new chapter with less strain.

CONCLUSION

The strain of an ending marriage is obvious to the parties and while the legal system bears an appreciation of this fact, the sheer volume of issues presented to the Honourable courts

on a daily basis mostly prohibit the court to settle the parties after carefully considering all the nuances of each and every family before the Honourable Court.

The Kenyan judiciary has recognized this fact and has fully embraced Court Annexed Mediation. Acrimonious family issues are often referred to Mediation by the Judicial officers as they recognize the benefit that the parties reap from this process. For example, the judiciary reported that the settlement rate of matters referred to Court Annexed Mediation between January and April 2024 was about 57.89%.

How much better is it for parties who do not go to court for long litigation rather file with the Honourable Courts already settled agreements for adoption as Court Orders or rather present to the Courts only targeted and specific issues for litigation?

HOW CAN WE HELP?

At CM Advocates LLP, our **Private Wealth, Family Law, Family Business & Global Mobility Advisory Services** understand that the process of marital separation, while challenging, is also an opportunity to build a stable future for all involved. Recognizing the emotional and financial strain often associated with these transitions, we champion amicable and efficient dispute resolution methods.

We offer comprehensive guidance and support to separating couples, leveraging the significant advantages of mediation to achieve tailored, confidential, and sustainable outcomes for your family. Our expertise ensures that you can navigate this transition with dignity and foresight:

- **Crafting Customized Parental Responsibility Agreements:** We assist in designing flexible solutions for children's custody, maintenance, and overall well-being, including tailored access schedules, shared custody arrangements, and provisions for extracurricular activities that truly fit your family's unique dynamics.
- **Fostering Amicable Resolutions:** Our approach begins with setting a cooperative tone through mediation, reducing tension and empowering both parties to engage in objective problem-solving. This minimizes strain on relationships, benefiting not only the separating couple but also their children and wider family network.

- **Strategic Resolution of Matrimonial Property & Spousal Support:** We guide parties in collaboratively agreeing on the equitable division of matrimonial assets and liabilities, and the establishment of mutually acceptable terms for alimony or spousal support, ensuring fairness and financial clarity.
- **Ensuring Confidentiality:** We provide a secure and private environment for discussing sensitive personal and financial matters, ensuring that the details of your separation agreement remain confidential, unlike public court filings.
- **Expert Legal Facilitation:** Our skilled facilitators, with deep expertise in Kenyan family law, provide invaluable guidance. They ensure your process remains focused and productive, helping you explore legally sound solutions while understanding likely outcomes in both mediation and litigation, and proactively avoiding potential legal pitfalls that could compromise your agreement.
- **Proactive Future Planning:** We empower you to look beyond immediate concerns and plan for future eventualities, assisting with crucial aspects like appointing legal guardians for children, extending maintenance provisions, and addressing other long-term family needs.
- **Cost & Time-Efficient Solutions:** By promoting direct communication and collaborative problem-solving, we help you avoid the drawn-out timelines and escalating expenses of traditional litigation. This approach preserves your financial and emotional resources, allowing for a quicker, less stressful, and more affordable transition to your next chapter.
- **Targeted Litigation (If Necessary):** Should complete consensus not be achievable on all issues, we help you strategically narrow down only the most intractable disputes for focused and efficient court intervention, ensuring that any legal action is precise and purposeful.

At **CM Advocates LLP**, we are committed to helping you achieve a respectful and enduring resolution, enabling your family to move forward with peace and stability.

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